

## CHAPTER XIX. STORMWATER

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**19-101.** The following words, terms and phrases, as used in Article, but only for the purposes of this Article, shall have the following meanings:

- 1) Bonds means obligations of the city, for which the principal of and the interest on is paid in whole or in part from special assessments, service fees, sales tax, general ad valorem taxes, or any available city or stormwater utility fund revenues heretofore or hereafter issued to finance the costs of capital improvements.
- 2) Building permit means a permit issued by the building official of the City of Spring Hill that permits structure construction.
- 3) Certificate of occupancy means a certificate issued by the building official of the City of Spring Hill that permits a newly constructed or a new addition to real property to be occupied.
- 4) City means the City of Spring Hill, Kansas.
- 5) Costs of capital improvements means costs incurred by the stormwater utility in providing capital improvements as part of the stormwater management program, including, without limitation, alteration, enlargement, extension, improvement, construction, reconstruction, and development of the stormwater system, professional services and studies connected therewith; principal and interest on bonds heretofore or hereafter issued, including payment of any delinquencies; studies related to the operation of the system; costs related to water quality enhancements, costs related to complying with federal, state or local regulations; acquisition of real and personal property by purchase, lease, donation, condemnation or otherwise; and for the costs associated with purchasing equipment, computers, furniture and all other items necessary or convenient for the operations of the stormwater utility.
- 6) Debt service means an amount equal to the sum of all issuance costs, any interest payable on bonds during any fiscal year or years, and any principal installments payable on the bonds during such fiscal year or years.
- 7) Developed property means real property, other than undeveloped land.
- 8) Director means the director of public works department of the City of Spring Hill or the director's designee.
- 9) Extension and replacement means cost of extensions, additions and capital improvements in, or the renewal and replacement of capital units of, or purchasing and installing of equipment for, the stormwater management program, or land acquisition for the stormwater management program and any related costs thereto, or paying extraordinary maintenance and repairs, including the costs of capital improvements or any other expense that is not costs of operation and maintenance or debt service.
- 10) Fiscal year means a twelve-month period commencing on the first day of January of any year.
- 11) Governing body means the governing body of the City of Spring Hill, Kansas.
- 12) Impervious area means the total number of square feet of hard surface on a given property that either prevents or retards the entry of water into the soil matrix, and/or causes water to run off the surface in greater quantities or at an increased rate of flow, than it would enter under conditions similar to those on undeveloped land. Impervious area includes but is not limited to, roofs, roof extensions, driveways, pavement, swimming pools, sidewalks, porches, decks, patios and athletic courts. Whether area counts as impervious area is up to the ultimate determination of the Director.
- 13) Non-single family residential property means all property that is not classified as single family residential property by the Johnson County, Kansas or Miami County, Kansas Appraiser's Office.
- 14) Operating budget means the annual budget established for the stormwater utility for the succeeding fiscal year.

- 15) Operations and maintenance means, without limitation, the current expenses, paid or secured, of operation, maintenance and repair and replacement of the stormwater management program or for implementing the stormwater management program as calculated in accordance with generally accepted accounting practices, and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses including professional services, equipment costs, labor costs, and the cost of materials and supplies used for current operations.
- 16) Person shall mean any person, firm, corporation, association, partnership, political unit, or organization.
- 17) Revenues means all rates, fees, assessments, rentals, or other charges or other income received by the stormwater utility in connection with the management and operation of the stormwater management program, including amounts received from investment or deposit of monies in any fund or account, as calculated in accordance with sound accounting practices.
- 18) Service fee rate means the fee rate per square foot of impervious area as established in the Stormwater Fee Resolution adopted and periodically updated by the Governing Body.
- 19) Sewer, sewer system shall mean surface water and storm sewers that exist at the time this Ordinance is adopted or that are hereafter established and all appurtenances necessary in the maintenance, operation, regulation, and improvements of the same, including, but not limited to, pumping stations; enclosed sewer systems; outfall sewers; surface drains; street, curb and alley improvements associated with storm or surface water improvements; natural and manmade wetlands; channels; ditches; rivers; streams; other Stormwater conveyances; detentions and retention facilities; and other flood control facilities and works for the collection, conveyance, pumping, treating, controlling, managing and disposing of water carried pollutants or storm or surface water.
- 20) Single family residential property means property used primarily for one-family intended for occupancy as separate living quarters for one family, with a kitchen plus sleeping and sanitary facilities in single family detached residential unit or a two family attached residential unit located thereon within the city limits, as established by the Governing Body of the City.
- 21) Stormwater management program means all aspects of work necessary to perform and provide storm and surface water services in the city, including but not limited to administration, planning, engineering, operations, maintenance, best management practices, control measures, public education, citizen participation, regulation and enforcement, protection, and capital improvements, plus such non-operating expenses as reserves and bond debt service coverage as are associated with provision of the stormwater management program.
- 22) Stormwater service fee means a fee authorized by this article and the City's Stormwater Fee Resolution, as amended, charged to owners of property served and benefited by the stormwater utility and shall be the product of multiplying the impervious area by the service fee rate.
- 23) Stormwater system means surface water and storm sewers and all appurtenances necessary in the maintenance, operation, regulation, and improvement of the same, including, but not limited to, pumping stations; enclosed storm sewers; outfall sewers; surface drains; street, curb and alley improvements associated with storm or surface water improvements; natural and manmade wetlands; channels; ditches; rivers; streams; detention and retention of facilities; and other flood control facilities and works for the collection, conveyance, pumping, infiltration, treating, controlling, managing and disposing of water carried pollutants or storm or surface water.
- 24) Stormwater utility means the utility created by this article for the purpose of implementing and funding the stormwater management program.

- 25) Undeveloped land means land that has not been built upon or altered from its natural condition in a manner that disturbed or altered the topography or soils on the property to the degree that the entrance of water into the soil matrix is prevented or retarded.

**19-102. Administration.** The public works director shall manage the stormwater utility. The director shall be responsible for developing and implementing stormwater management plans and solely managing facilities, stormwater systems and storm sewers. This utility shall charge a stormwater service fee based on individual contribution of runoff to the system, benefits enjoyed and service received. The stormwater utility shall be administered by Director under the direction and supervision of the City Administrator and shall have the power to undertake the following activities to implement the stormwater management program:

- A. Advise the governing body on matters relating to the stormwater management program and to make recommendations to the governing body concerning the adoption of ordinances, resolutions, policies, guidelines and regulations in furtherance of the objectives of the stormwater management program.
- B. Undertake studies, acquire data, prepare master plans, analyze policies or undertake such other planning and analyses as may be needed to address concerns related to stormwater with the city and to further the objectives of the stormwater management program, and to undertake activities designed to communicate, educate and involve the public and citizens in addressing these issues or in understanding and abiding by the elements of the stormwater management program.
- C. Advise and lead, with assistance of any other designees as determined by the Director, in actions to acquire, design, construct, operate, maintain, expand, or replace any element or elements of the stormwater system, including funding the acquisition of easements by eminent domain, and obtaining title or easements (or real property) other than by eminent domain, over any real or personal property that is part of, will become part of or will protect the stormwater system, or is necessary or convenient for the implementation of the stormwater management program.
- D. Regulate, establish standards, review, and inspect the design, construction or operation and maintenance of any stormwater system that is under the control of private owners, whether or not such systems are required or intended for dedication to the public storm sewer system, when such systems have the potential to impact, enhance, damage, obstruct or affect the operation and maintenance of the stormwater system or the implementation of the stormwater management program.
- E. Regulate, establish standards, review and inspect land use or property owner activities when such activities have the potential to affect the quantity, timing, velocity, erosive forces, quality, environmental value or other characteristics of stormwater which would flow into the stormwater system or in any way effect the implementation of the stormwater management program.
- F. Undertake any activities related to stormwater management when such activities are recommended by applicable federal, state or local agencies or when such activities are required by any permit, regulation, ordinance, or statute governing stormwater or water quality concerns.
- G. Analyze the cost of services and benefits provided by the stormwater utility and the structure of fees, service charges, credits, and other revenues on an annual basis and make recommendations to the governing body regarding the same.

**19-103. Budget.** The City shall, as part of its annual budget process, adopt an operating budget for the storm water utility for the next following fiscal year. The operating budget shall conform with State Budget Law, city policy and generally accepted accounting practices.

**19-104. Stormwater Service Fee.**

- A. Subject to the provisions of this article, a stormwater service fee is imposed on all real property located within the city. City owned property and city maintained property that is constructed and/or located on public right-of-way, public trails, public streets, public alleys, and public sidewalks will

be exempt from the imposition of the stormwater utility fee. The governing body, upon recommendation of the director, shall, from time to time, by resolution establish the service fee rate for each square foot of impervious area consistent with the benefits to be provided.

- B. Unless otherwise stated in this Article, there shall be no exception to the Stormwater Service Fee based on the types of use of property. This includes, but is not limited to, agricultural uses, vacant lots, civic uses, religious uses, and educational uses. Any tract platted as stormwater detention shall not incur a stormwater fee.
- C. For new construction on non-residential lots, the charge for the stormwater service fee at the commercial rate set by Resolution attributable to that unit shall commence upon the issuance of the building permit for that unit, or additional development to property that is already developed, or if construction is at least 50 percent complete and is halted for period of three months, then that unit shall be deemed complete and the stormwater service fee shall commence at the end of the three month period.
- D. Properties that are vacant must still pay a stormwater utility fee. When any property is platted into multiple separate tracts, stormwater fees for each applicable tract will begin to accrue at the time the plat is approved by the City.
- E. Any increase or decrease in the impervious square feet associated with new or remodeling construction shall commence upon the issuance of the certificate of occupancy. The stormwater service fee shall be based on the status of the property on May 31 of each year.
- F. In performing this calculation, the numerical factor for the impervious square feet shall be rounded to the nearest hundred square feet.
- G. For common property, the director shall calculate and allocate the stormwater service fee pro rata among the owners of record of the common property.
- H. The director shall make initial calculations in accordance with the methods established in this section to determine the number of impervious square feet is located on all property and may from time to time change this calculation from the information and data deemed pertinent. With respect to new construction, the director may require that the applicant for development approval submit square footage impervious area calculations.

(Ord 2024-12)

**19-105. Appeal Procedure.** Owners of property other than single and two family homes, for which a stormwater service fee has been imposed, who disagree with the calculation of the stormwater service fee may appeal the calculation or finding to the city administrator or his or her designee as provided herein.

- A. The appellant, who must be the property owner, must file a written notice of appeal, including the basis of the appeal, with the city clerk within 30 days following distribution of Johnson County ad valorem tax bills. In the written appeal, the appellant shall provide information including a land survey prepared by a surveyor registered in the State of Kansas showing total property square foot area, type of surface material, and impervious square foot area. At the Director's sole discretion, the requirement of a land survey may be waived upon request of the appellant, provided the Director determines that a land survey is not necessary to make a determination on the appeal. Based on the information provided, the Director shall make a determination as to whether the stormwater service fee should be adjusted or eliminated for the subject property. The Director shall notify the appellant in writing of the decision.
- B. The Director's decision can be appealed to the Governing Body. Such appeal shall be made within 10 days of the Director's decision.
- C. The decision of the Governing Body shall be final.
- D. Throughout the appeal process, the burden of proof shall be on the appellant to demonstrate, by clear and convincing evidence, that the determination of the stormwater service fee is erroneous.
- E. The filing of an appeal shall not stay the imposition, calculation or duty to pay the fee. The appellant shall pay the stormwater service fee to Johnson County or Miami County as stated in the billing. If either

the Director or Governing Body determines that the appellant should pay a fee, pay a fee amount less than the amount appealed, or receive a credit, the city shall issue a check to the appealing party in the appropriate amount within ten days of the date of the applicable written decision.

**19-106. Stormwater Service Fee Collection.**

- A. The stormwater service fee shall be billed by the Johnson County Clerk or Miami County Clerk and collected by the Johnson County Treasurer or Miami Count Treasurer. The stormwater service fee shall be shown as a separate item on the county's annual ad valorem real property tax statement, in accordance with the procedures established in an agreement, pursuant to K.S.A. 12-2908, between the city and the county, as hereby authorized. The payment of stormwater service fee bills for any given property shall be the responsibility of the owner of the property.
- B. To the extent permitted by applicable law, a stormwater service fee shall be subject to interest for late payment at a rate that is the same as the rate prescribed in K.S.A. 79-2004, as amended and K.S.A. 79-2968, as amended, shall constitute a lien on the applicable property, and shall be collected in the same manner as ad valorem real property taxes collected by the county, regardless of whether the stormwater service fee was incurred when a property owner was in possession of the property or a non-owner was in possession of the property.

**19-107. Stormwater Utility Fund.** Stormwater service fees, dedicated ad valorem taxes and other available revenues shall be paid into a fund that is hereby created and shall be known as the Stormwater Utility Fund. This fund shall be used for the purpose of paying the costs of capital improvements, extension and replacement, operations and maintenance, debt service and any other costs associated with the implementation and operation of the stormwater management program.

**19-108. Absence of Liability for Flooding.** Floods from stormwater runoff may occur which exceed the capacity of the storm drainage facilities constructed, operated, or maintained by funds made available under this chapter. This chapter shall not be construed or interpreted to mean that property subject to the fees and charges established herein will always (or at any time) be free from stormwater flooding or flood damage, or the stormwater systems capable of handling all storm events can be cost-effectively constructed, operated, or maintained. Nor shall this chapter create any liability on the part of, or cause of action against, the city, or any official or employee thereof, for any flood damage that may result from such storms or stormwater runoff. Nor does this chapter purport to reduce the need of the necessity for obtaining flood insurance by individual property owner.

**19-109. Severability.** If any section, subsection, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

(Ord 2024-11)